

Moreover, Skene is not entitled to its alleged earlier priority date, namely December 13, 1999, with respect to the subject matter relied upon by the Examiner. In this regard, Skene 09/788,281 (on which the publication is based) was only a continuation-in-part of the parent case, namely, U.S. Serial No. 09/459,815. For the Examiner's convenience, Skene 09/459,815 is filed herewith as an attachment. In rejecting claims 1-8 here as allegedly anticipated, the Examiner has cited paragraphs [0091], [0092], [0094] and [0098]-[0099]. See, Office action at pages 3-5. A review of the Skene 09/459,815 patent application, however, reveals that none of this subject matter was included in that case at the time that application was filed (in December 1999). Rather, all subject matter after Figure 14 was first added in the CIP application Serial No. 09/788,281, filed in February, 2001.

Thus, the Skene publication relied upon by the Examiner is not entitled to the earlier filing date (namely, December 13, 1999) with respect to the subject matter relied upon by the Examiner here (paragraphs [0091, 0092, 0094 and 0098-99]). As noted above, these paragraphs first showed up in the CIP application that was filed after the filing date of the parent application here. Thus, Skene should be withdrawn as prior art.

For the avoidance of doubt, the undersigned reserves the right to address the merits of the cited art (namely, Skene) in the event the Examiner provides any new rejections. In other words, this paper is filed without any waiver of the contention that Skene (at the cited paragraphs) does not anticipate any pending claim.

A Notice of Allowance is requested.

Respectfully submitted,

/David H. Judson/

---

David H. Judson  
Registration No. 30,467

January 19, 2009

